S.B. CIVIL WRIT PETITION NO.6462/2007

Chhagan Lal and others.

vs.

Addl. District Judge, Bali and others.

Date : 22.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.R Choudhary for Mr.S Srimali, for petitioner.

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Heard learned counsel for the petitioner.

The petitioners are aggrieved by the orders dated 6.10.2004 and 5.8.2006 passed by the two Courts below in a proceeding under Order 39 Rule 2A CPC.

The trial court granted injunction in favour of the plaintiffs on 8.2.2001. Injunction was sought against Smt. Bhanwari Devi, who was Sarpanch of Gram Panchayat Novi, but without impleading the Gram Panchayat as party. The other parties in the injunction proceedings were Block Development Officer and State. The trial court granted injunction restraining the defendants from

raising any construction over the the property in dispute.

The plaintiffs/petitioners submitted an application under Order 39 Rule 2A CPC with the allegation that the defendants violated the injunction order and constructed the wall. The trial court held that where the construction was raised, was beyond the subject matter. The trial court's said finding was reversed by the appellate court but the appellate court was of the view that since the defendant was a lady and she did not deliberately disobeyed the order dated 8.2.2001 and looking to the entire facts, the alleged contemners cannot be punished.

After going through the facts of the case, I do not find any reason to interfere in the impugned order while exercising jurisdiction under Article 227 of the Constitution of India.

Learned counsel for the petitioners at this stage stated that the suit itself has been decided in favour of the petitioners.

In view of the above also, I do not find any reason for taking any action against the alleged contemners.

Consequently, this writ petition having no force, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya